

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR WIRELESS VOICE & DATA SERVICES AND EQUIPMENT**

**New Cingular Wireless PCS, LLC dba AT&T Mobility**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and New Cingular Wireless PCS, LLC dba AT&T Mobility (hereinafter "Vendor"), with its principal place of business at 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission's Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-089, on April 23, 2007, for Wireless Voice and/or Data Services and Equipment. DIR acknowledges the fact Southwestern Bell Telephone dba SBC Datacomm has merged with AT&T Corporation and the name of the Vendor has changed to New Cingular Wireless PCS, LLC dba AT&T Mobility. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-089 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-089, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-089, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

- A.** The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

- B.** DIR agrees that Vendor may accept Purchase Orders with a termination date up to one year beyond the then-effective termination date of the Contract. Vendor agrees that it shall not accept Purchase Orders under the Contract for any term beyond one year from the effective termination date of the Contract.

### 3. Product and Service Offerings

Wireless Voice and Data Products and Services available under this Contract are all published AT&T Mobility Nation Plans, Government Pooling Plans, Business Shared Pooling Plans and all AT&T Mobility Data Plans. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of Products and Services awarded based on the posting described in Section 1.B above.

### 4. Pricing

#### A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

#### B. Customer Discount

The minimum Customer discount from the Vendor for all published AT&T Mobility Nation Plans, Government Pooling Plans, Business Shared Pooling Plans and all published AT&T Mobility Data Plans will be applied in accordance with the sales volume schedule listed below.

|                             |      |
|-----------------------------|------|
| \$5 Million - \$10 Million  | 23%* |
| \$10M - \$15 Million        | 24%  |
| \$15 Million - \$20 Million | 25%  |
| \$20 Million+               | 26%  |

\*Current discount based on annual total state sales

The minimum Customer discount from the Vendor for all accessories is 30% off of current retail price. Discounts may not apply in the case of emerging technology products like the Apple iPhone.

#### C. Customer Price

- 1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

- 3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or

services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**F. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

**G. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**H. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**I. Telecommunications Fees**

1) The only applicable FCC authorized fee, surcharge or assessment in effect as of the date of this Contract is the Federal Universal Service Fund charge. This fee may appear on billings to Customers. No other FCC or PUC authorized fee, cost recovery fee, surcharge or assessment applicable to wireless voice and/or data telecommunications services may be imposed during the term of this Contract, without the prior amendment to authorize such imposition under the Contract. Vendor acknowledges that certain Customers, that are political subdivisions, are exempt from the imposition and collection of certain Texas telecommunications fees,

including the Texas Universal Service Fund Charge and Texas Infrastructure Fund assessment. In addition, state agency-Customers have additional exemptions from Texas fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC or PUC and which are otherwise not applicable to wireless voice and/or data telecommunications services. Vendor also agrees to not bill for items for which a Customer has an exemption. Vendor agrees to promptly correct any incorrect billings that occur.

**2)** Except for changes in the law, during the term of this Contract, all changes in fee structures, which create or authorize Vendor to impose an unlisted telecommunications fee on these Products and or Services, which Vendor desires to impose under this Contract, shall require an amendment in order to be effective against the State of Texas and Customers. In the event of a change in the law or fee structures, which results in an exemption from payment in favor of the state of Texas or its Customers, Vendor shall give effect to the exemption without the necessity of a contract amendment.

**J. Other Fees**

Vendor acknowledges all activation fees and termination fees, including early termination fees, are waived for all DIR eligible customers

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

**C)** Administrative fees are applicable to all invoiced sales for wireless voice and data service plans, equipment and accessories. The parties agree the sales estimate for wireless voice and data equipment and accessories is 2% of total prior annual sales. Based on this assumption, within thirty (30) days of contract award, Vendor will remit a check in the amount of 2% of that amount as payment in full for all administrative fees for wireless voice and data equipment and accessories for the one year contract term. Should the contract term be extended per any of the subsequent three one-year options, a similar payment will be made within thirty (30) days of the contract extension, based on prior annual sales in the initial contract term.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Cathy Pryor  
AT&T Mobility  
7855 Walker Drive, First Floor  
Greenbelt, MD 20770  
Phone: (703) 209-0763  
Facsimile: (301) 576-5443  
Email: Cathleen.pryor@att.com

**7. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

1. All references to Catalog Information System Vendors (CISV) in Appendix A are hereby deleted.
2. **Appendix A, Section 13. Customer Satisfaction Metrics** is hereby added as follows:

**13. Customer Satisfaction Metrics**

DIR will be providing quarterly "customer satisfaction scores" and DIR is reserving the right to engage a third party to build and gauge customer satisfaction metrics. Should a wireless vendor go two straight quarters with a low customer satisfaction score, DIR reserves the right to suspend all new prospective business orders for up to two business quarters till customer satisfaction issues are resolved. Further, DIR may be selecting an integrator that will serve as a single interface for wireless telecommunications management which may include single portal ordering, provisioning, billing, reconciliation and dispute management. The vendors will agree to utilization of this interface for their DIR wireless contracts.

This Contract is executed to be effective as of the date of last signature.

**New Cingular Wireless PCS, LLC dba  
AT&T Mobility**

**The State of Texas, acting by and through  
The Department of Information Resources**

**Authorized By: Signature on File**

**Authorized By: Signature on File**

**Name: Cathleen M. Pryor**

**Name: Cindy Reed**

**Title: Vice President, Contracts &  
Compliance**

**Title: Deputy Executive Director  
Operations & Statewide Technology  
Sourcing**

**Date: 9/26/07**

**Date: 9/28/07**

**Legal: Signature on File**